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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,334	08/26/2003	Yasuo Tamura	1614.1359	3539
21171 7590 07/29/2008 STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER MUSSELMAN, TIMOTHY A	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 07/29/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/647,334

Applicant(s)

TAMURA ET AL.

Examiner

TIMOTHY MUSSELMAN

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-893)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

In response to the communication filed 4/3/2008, claims 1-5, 8-11, and new claim 12 are pending in this case. Claims 7-8 have been canceled previously.

Claim Rejections - 35 USC § 103

The following is a quotation of the relevant portion of 35 U.S.C. 103 that forms the basis for the rejections made in this section of the office action;

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Claims 1-2, 4-6, and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toshiya et al. (Japanese pub# 2001-273375) in view of Sherer et al. (US 5,875,175) and also Pulfer, "The truth about I-71 delays" from the Cincinnati Enquirer, March 5th, 1996.

Regarding claims 1-2, 5-6, and 9-12, Toshiya discloses a system for distributing exam results which sends a user an email asking if the user wants to view exam results, and upon a user reply, sends another email to the user containing a link (network address) containing the results. See paragraphs 0001 and 0018-0020. Toshiya also discloses in paragraph 0021 that examinees are identified by examinee numbers.

Toshiya does not expressly disclose wherein the system records transmission and reception times of transmitted and received data. However, time stamping in email systems is old and well known in the art.

Examiner takes OFFICIAL NOTICE that this has been the industry norm for email systems since the inception of such systems, and that such an inclusion would have been obvious to one of ordinary skill in the art at the time of the invention. As evidence, consider the reference to the article retrieved from a well known computer support website titled "Outlook 97 time stamp in messages inaccurate". Examination of the first paragraph (the question), illustrates that this prolific email program from 1997 utilized time-stamps for both reception and transmission. The fact that this particular reference describes problems with the system does not negate the fact that time stamping of emails is well known in the art and in fact the industry standard.

Toshiya is silent as to the order in which the exam results are transmitted, and thus does not disclose wherein the system sends the results based on the user who responds the fastest to the inquiry email from the system. However, this is not a novel concept when it comes to queues. As a prolific example of this concept, the Pulfer article from the Cincinnati Enquirer discloses wherein it is common for systems to use this fastest response methodology while interacting with users. While the Pulfer article is entirely unrelated to the subject matter of the instant invention, it does by chance disclose a commonly known situation involving phone system queues at a radio station. In this instance, the 7th caller wins a prize. Some things to consider in this situation pertaining in general to queues are that all of the users participating in the radio contest had the same baseline time where they received the initial message to respond (presumably the message was broadcast over the radio station), and thus the responses (calls to the station) are of course based on the fastest response times. While this is indeed a very broad and general disclosure, it nevertheless illustrates that in matters pertaining to users responding to messages, the messages are often queued based on response time, and the shorter response time is known to be beneficial. In light of this broad teaching, it would have been obvious for other systems such as Toshiya involving mass responses to system transmissions to include this concept of beneficial ordering based on response time, because the incorporation of this concept into the system of Toshiya would not alter the concept or it's fundamental operation (the fastest callers to the radio station get a prize, the fastest

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responders in the system of Toshiya would also get a prize in a sense that their results would be transmitted sooner).

Toshiya is also silent as to the communications being sent based on server load. However, this concept is old and well known in the art of electronic communications. For example, Sherer discloses a system and method for sending mass electronic communications that includes this concept. See col. 5: 10-30, wherein it is described how packets are sent in an information network according directly based on monitored load. It would have been obvious to one of ordinary skill in the art to send the communications to the examinees based on the server load, because this was consistent with the current state of electronic communications at the time of the invention, as taught by Sherer.

Regarding claim 4, toshiya/Sherer disclose all of the transmission and reception processes as described above with reference to claim 1. Sherer further discloses wherein the examinee can be a member of a group which elects to disclose results, and wherein the results of the group are transmitted to the examinee. See paragraph 0026, and note that 'successful candidates' are a group. Also note in paragraph 0026 that the examinee can store in a profile beforehand addresses that the user wants to disclose the results to. These addresses together also form a group, and for this particular group, the examinee decides whether or not to disclose the information.

Claim 3 is rejected under 35 U.S.C. 103(a) as being anticipated by Toshiya et al. (Japanese pub# 2001-273375).

Regarding claim 3, Toshiya discloses the communication sequence leading to the transmission of the pass/fail exams as described above, and further discloses wherein the results can include the results of other examinees as well. See paragraph 0026. However, there is no teaching wherein it is the ID

numbers, per se, that are transmitted. However, this limitation is not a functional distinction over Toshiya, since both systems transmit multiple and anonymous results. The precise manner in which the multiple results are displayed would merely be an arbitrary design choice that would be obvious to one of ordinary skill in the art at the time of the invention.

Response to Arguments

Applicant's arguments dated 4/3/2008 have been fully considered. Applicant's arguments that FIFO is not equivalent to the fastest response time methodology claimed in claims 1, 2, 4-6, and 9-11 are persuasive and the previous rejections on this basis are withdrawn. This action is made non-final.

Applicant's arguments that Toshiya does not disclose the group aspects are not persuasive. Examiner acknowledges that paragraph 0023 was in fact misinterpreted by the examiner in precisely the fashion applicant argued (the sent results are not plural). However, paragraph 26, although cumbersome to understand, does appear to describe wherein users can select other users to have their results emailed to, and these addresses can be stored in a profile beforehand. This would comprise transmitting results of other users *around* the particular examinee, because 'around' is open to wide interpretation. The use of ID numbers is a not disclosed, but the labeling indicia is an arbitrary design choice that does not effect the system operation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Musselman whose telephone number is (571)272-1814. The examiner can normally be reached on Mon-Thu 6:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M./
Acting Examiner of Art Unit 3714

/Robert Pezzuto/
Supervisory Primary Examiner
Art Unit 3714